

It is respectfully submitted that the embodiments in the Kohrs patent relied upon for the anticipation rejection is not prior art to the present invention. The present application has a filing date of March 27, 1995. The Kohrs '636 Patent has a filing of January 11, 1996. The '636 Patent is a continuation-in-part of an earlier filed application serial no. 247,857. Although the '857 application has been abandoned, Applicant has been unable to obtain a copy of its prosecution history despite numerous requests of the Patent Office. Nevertheless, a review of the text of the '636 Patent makes it clear that the cited embodiment of FIGS. 17-23 were not present in the parent application, but was instead added to the CIP application on January 11, 1996.

First, at column 5, line 6, a section spanning the next four columns is labeled "Parent Application". At lines 6-7, the Applicant indicates that: "The following is a description of the implant as it appears in parent application Ser. No. 08/247,857." Then, at column 8, line 44, a new section is presented entitled "Improved Embodiment". In the following text, Kohrs indicates that FIGS. 17-23 refer to the "improved alternative embodiment". It is this embodiment that is described as including external threads. The embodiment indicated as being derived from the parent application does not have external threads.

Consequently, it appears that the embodiment of FIGS. 17-23 is not entitled to the filing date of the parent application. This new matter was not added until January 11, 1996. The filing date of the '636 CIP Patent is over ten months after the filing date of the present application. Consequently, this new matter of the Kohrs '636 Patent cannot

constitute prior art to the present application under any paragraph of §102, including §102(e).

Since the material relied upon in the Office Action is not prior art, it is respectfully requested that the rejection of claims 1-11 be withdrawn. Since these claims were otherwise indicated to be allowable in Paper No. 15, it is believed that the present application as it now stands is in condition for allowance. Action toward that end is hereby solicited.

Respectfully submitted:



Michael D. Beck

Reg. No. 32,722

Woodard, Emhardt, Naughton

Moriarty & McNett

Bank One Center Tower

111 Monument Circle, Suite 3700

Indianapolis, Indiana 46204-5137

(317) 634-3456